REMARKS

Claims 1-22 are pending in the Application.

Claims 1-22 stand rejected.

I. REJECTION UNDER 35 U.S.C. § 102

Claims 1, 4, 5, 9, 11, 16 and 18 have been rejected under 35 U.S.C. § 102 as being anticipated by *Artsy*, U.S. Patent No. 5,701,484. The Applicants respectfully traverse the rejection of claims 1, 4, 5, 9, 11, 16 and 18 under 35 U.S.C. § 102.

Claim 1 is directed to a data processing system for bulk data transfer. The system includes a source data processing system for distributing data to one or more target data processing systems, and one or more fan-out nodes for transferring the data between the source system and each of the one or more target data processing systems and transferring result information between the one or more target data processing systems and a preselected set of one or more data processing systems for managing data distribution. *Artsy* allegedly teaches all of the limitations of claim 1. (Paper No. 7, page 2.) The Applicants respectfully disagree.

As an initial matter, *Artsy* is directed to a system for routing objects along action paths in a data processing system. (*Artsy*, column 1, lines 8-10.) An object is an abstraction that encapsulates data in a known way with a known list of operations or methods to access the data. (*Artsy*, column 3, lines 58-60.) Routing is concerned with the orderly propagation of an object between logical stations. (*Artsy*, column 2, lines 31-32.) Typically, a logical node is a single workstation, but a single workstation running a multiuser operating system (*e.g.* Unix) may comprise multiple logical nodes. (*Artsy*, column 5, lines 38-45.) An action path is specified for the object, and a mechanism for propagating the object along the action path. (*Artsy*, column 1, lines 55-57.) In other words, the system in *Artsy* is similar to, and may be used for, the distribution of forms in a business organization, whereby an employee fills in the form and the routing application assigns it an action path whence the form moves along the action path to acquire the requisite approvals, finally to be archived. (*Artsy*,

column 1, line 64 through column 2, line 5.) Thus, as an initial matter, *Artsy* is not directed to systems and methods for bulk data distribution. With respect to the limitation in claim 1 reciting a source data processing system for distributing data to one or more target data processing systems, *Artsy* purportedly teaches this element of claim 1 in disclosing a generic networked data processing system. (Paper No. 7, page 2) (citing *Artsy*, column 5, lines 21-40.) These teachings make no reference to the distribution of data from a source system to one or more target systems, and moreover, *Artsy* particularly teaches that an object, as used therein, resides as a whole on a single logical node at a given time. (*Artsy*, column 6, lines 24-25.) This property would not be recognized by those of ordinary skill in the art as being associated with a system for distributing data from a source system to one or more target systems. For example, this would imply that the data would be sent to only one target system at a time, and once delivered to the target system, deleted from the source system. Then to send the data to the next target system, the data would first have to be reconstituted on the source system. This is illogical and impractical, and therefor one of ordinary skill in the art would not understand *Artsy*, to teach or suggest a source data processing system for distributing data to one or more target data processing systems.

With respect to the limitation reciting one or more fan-out nodes for transferring data between the source system and one or more target data processing systems, and transferring result information to a preselected set of one or more data processing systems for managing data distributions, the Examiner identifies teaching in *Artsy* discussing logical nodes as commonly but not necessarily a workstation, wherein each logical node supports object-oriented applications, and objects are uniquely-identified, self-contained entities that can be relocated between logical nodes, and which are essentially abstractions encapsulating data, as previously discussed. (Paper No. 7, page 2) (citing *Artsy*, column 5, line 6 through column 6, line 22.) This teaching does not disclose one or more fan-out nodes for transferring the data between the source system and each of the one or more target data processing systems and transferring result information between the one or more target data processing systems and a preselected set of one or more data processing systems for managing data distribution, as recited in claim 1.

Anticipation requires that a single prior art reference teach the identical invention of the claim. MPEP § 2131. For at least the aforesaid reasons, the Applicants respectfully contend that *Artsy* does not teach the identical invention of claim 1. Thus, claim 1 is allowable under 35 U.S.C. § 102 over *Artsy*.

Claim 4 is directed to the system of claim 1 in which the one or more fan-out nodes comprises a plurality of fan-out nodes, and wherein the transferring of the data comprises receiving data from the source data processing system by a first fan-out node, sending data to a second fan-out node, and sending the data from the second fan-out node to one or more of the target data processing systems. *Artsy* allegedly discloses the limitation of claim 4 in discussing the network discussed above in conjunction with claim 1, and additionally, that objects communicate with each other by invoking operations of their public interfaces by using a handle to locate the target object of an invocation, invoke the requested operation and pass the result back to the invoker. (Paper No. 7, pages 2-3) (citing *Artsy*, column 2, lines 21-40; column 5, line 65 through column 6, line 22; column 6, line 66 through column 7, line 6). *Id.* The Applicants respectfully disagree. These teachings disclose a plurality of network connected logical nodes logical nodes that may support object-oriented applications. (*Artsy*, column 2, lines 21-40; column 2, line 65 through column 6, line 22). These are not particularly disclosed to be either fan-out nodes or target data processing systems. Furthermore, as previously discussed, none of these nodes is disclosed as transferring result information from a target system to a selected set of systems for managing data distributions, so none of these nodes is taught as having the characteristics of a fan-out node as recited in claim 4. Consequently, *Artsy* does not disclose the identical invention of claim 4. Thus, claim 1 is allowable under 35 U.S.C. § 102 over *Artsy*.

Claim 5 depends from claim 1 and recites the system thereof in which source data processing system distributes the data in response to a request from at least one of the target data processing systems. Claim 5 is rejected on the same disclosure in *Artsy* discussing the distributed computing system illustrated in FIGURES 1 and 2 relied upon in rejecting claims 1 and 4. (Paper No. 7, page 3). These teachings have no disclosure in which data is distributed in response to a request from at least

one target data processing system. On the contrary, while the Applicants do not agree that routing an object as taught in *Artsy* would not be understood as not distributing data to one or more target systems, *Artsy* teaches that the submitter is the first principal that has requested to route the object on the specified action path. (*Artsy*, column 8, lines 31-32.) Therefore, *Artsy* does not anticipate claim 5. Consequently, claim 5 is allowable under 35 U.S.C. § 102 over *Artsy*.

With respect to claim 9, claim 9 is directed to a method for distributing data including the steps of transferring the data via a first set of one or more fan-out nodes to one or more endpoint systems, and transferring results information via a second set of the one or more fan-out nodes from the one or more endpoint systems to a preselected set of one or more data processing systems for managing data distributions. The results information is generated in response to the step of transferring the data. Claim 9 has been rejected on the same teaching in *Artsy* discussing a generic distributed computer system, and application objects relied upon in rejecting claims 1, 4 and 5. (Paper No. 7, page 3) (citing *Artsy*, column 2, lines 21-40; column 2, line 65 through column 6, line 22; column 6, line 66 through column 7, line 6). There is nothing therein, or elsewhere, that discloses first and second sets of fan-out nodes, or, as previously discussed, fan-out nodes generally. Anticipation requires that the reference teach the identical invention as recited in the claim. Because *Artsy* does not teach the identical invention as claim 9, claim 9 is allowable under 35 U.S.C. § 102 over *Artsy*. Additionally, claim 16, directed to a computer program product in a machine-readable storage medium including programming comprising instructions for performing operations paralleling the method steps of claim 9 has been rejected on the same ground as claim 9. (Paper No. 7, page 3.) For at least the reasons discussed in conjunction with claim 9, the Applicants also respectfully contend that claim 16 is not anticipated by *Artsy*, and is, thus, allowable under 35 U.S.C. § 102 over *Artsy*.

Claim 11 depends from claim 9 and recites the method thereof in which the step of transferring the data is performed in response to a request received from an application on at least one of the plurality of endpoints. Claim 11 has been rejected on disclosure in *Artsy* discussing object communication by invoking operations of their publicly-known interfaces. (Paper No. 7, page 3)

(citing *Artsy*, column 6 line 66 through column 7, line 6.) The Examiner also refers to teaching in *Artsy* that describes an action path object including a header, a body and trailer, and teaching further describing submitter information in the header. (Paper No. 7, page 3) (citing *Artsy*, column 8, lines 29-38; column 9, lines 1-9). In particular, the header includes a name and handle to its principal object which information can be used by other principals on the path to find who requires their actions on the routed object. (*Artsy*, column 8, line 67 through column 9, line 4.) The header further includes an application selector and a textual description of the subject of the routing. (*Artsy*, column 9, lines 4-9.) These do not describe a request received from an application on a end-point system, nor distributing data in response thereto. (In fact, there is nothing about routing an object in response to a request from a end-point system. On the contrary, there could be no such teaching because, as *Artsy* teaches, the information a principal uses to find the submitter is in the object being routed.) Consequently, *Artsy* does not teach the identical invention of claim 11, and thus does not anticipate claim 11. Therefore, the Applicants respectfully contend that claim 11 is allowable under 35 U.S.C. § 102 over *Artsy*. Additionally, claim 18 directed to a computer program product including instructions for performing operations paralleling the method step of claim 11 has been rejected on the same basis as claim 11. (Paper No. 7, page 3.) Consequently, claim 18 is also allowable under 35 U.S.C. § 102 for at least the reasons discussed in conjunction with claim 11.

II. REJECTION UNDER 35 U.S.C. § 103

Claims 2, 6, 7, 10, 12, 17 and 19 have been rejected under 35 U.S.C. § 103 as being unpatentable over *Artsy* in view of *Fujino, et al.*, U.S. Patent No. 6,085,222 ("*Fujino*"). The Applicants respectfully traverse the rejection of claims 2, 6, 7, 10, 12, 17 and 19 under 35 U.S.C. § 103.

Claim 2 depends from claim 1 and recites the system thereof in which each of the one or more fan-out nodes is operable for caching at least a portion of the data distribution and at least a portion of the result information. *Artsy* admittedly fails to teach the limitation of claim 2. Additionally, for the reasons discussed hereinabove in conjunction with line 1, the Applicants also respectfully submit

that *Artsy* fails to teach one or more limitations of claim 2 incorporated by reference therein for the dependency in claim 1. The Examiner relies on *Fujino* as teaching the admittedly missing limitation in claim 2 because caching data is well known to persons of ordinary skill in the art as evidenced by *Fujino*. (Paper No. 7, page 4.) *Fujino* is directed to a distributed communication system with adaptive data sending control in a computer network. (*Fujino*, column 1, lines 1-4.) Claim 2 has been rejected on teaching in *Fujino* discussing a caching function in a gateway nearest the client so that useless communications can be reduced more. (Paper No. 7, page 4) (citing *Fujino*, column 6, lines 4-11). Thus, the teaching in *Fujino* directed to caching in a gateway does not disclose caching a portion of a data distribution and at least a portion of result information, nor a fan-out node operable for caching such data. Claim 2 is not directed to the caching of data, generally. The Examiner further concludes that it would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate a caching function in the managing node to improve the performance of the system. (Paper No. 7, page 4.)

The Applicants respectfully disagree with the assertion as to obviousness for several reasons. There is no reason to engraft caching into the system of *Artsy*, suggested in one of the possible sources thereof. *See* MPEP § 2143.01. Indeed, to the contrary, *Artsy* is directed to a mechanism for routing objects along an action path consisting of action stops naming principals required to act on the object. (*Artsy*, column 3, line 58 through column 4, line 1.). There is nothing in *Artsy* that suggests that the routing of objects warrants caching. Additionally, there is no reference to a managing node in *Artsy* so modifying *Artsy* to incorporate caching into the managing node has no reasonable likelihood of success. Lastly, the motivation for modifying *Artsy*, to improve performance of the system is not found in one of the possible sources of a motivation for combining references, and moreover is not clear and particular. *See In re Lee*, 277 F.3d, 1338, 1343, 61 U.S.P.Q.2d 1430, 1433-34 (Fed. Cir. 2002); *In re Kotzab*, 217 F.3d 1365, 1371, 55 U.S.P.Q.2d 1313, 1317 (Fed. Cir. 2000); *In re Dembiczak*, 175 F.3d 994, 999, 50 U.S.P.Q.2d 1614, 1616 (Fed. Cir. 1999). Indeed, such an allegation is the reason that a suggestion or motivation must be clear and particular; otherwise the motivation "to improve performance" would always be asserted, because it is unlikely

that teachings would be combined to reduce the performance of something. Thus, for at least the reasons that the references alone or in combination do not teach or suggest all of the limitations of claim 2, and because there is no suggestion or motivation for modifying or combining the references from one of the sources thereof, nor a reasonable expectation of success in making the claimed invention by combining the references, the Applicants respectfully contend that a *prima facie* showing of obviousness has not been made. Consequently, claim 2 is allowable under 35 U.S.C. § 103 over *Artsy* and *Fujino*.

Additionally, claims 6, 10 and 17 have been rejected on the same basis as claim 2. (Paper No. 7, page 4.) Claim 6 is directed to the system of claim 5 in which a preselected one of the one or more data processing systems for managing data distributions enqueues the request in a database. The limitations of claim 6 have not been addressed at all in the light of the asserted teachings of *Artsy* and *Fujino*. Consequently, the Applicants respectfully assert that a *prima facie* showing of obviousness has not been made with respect to claim 6, and therefore claim 6 is allowable 35 U.S.C. § 103 over *Artsy* and *Fujino*. With respect to claims 10 and 17, each recite an express limitation that parallels the limitation of claim 2. For at least the reasons discussed above in conjunction with claim 2, the Applicants also respectfully assert that a *prima facie* showing of obviousness has not been made with respect to claims 10 and 17. Therefore, these claims are also allowable under 35 U.S.C. § 103 over *Artsy* and *Fujino*.

Claim 7 is directed to the system of claim 6 in which the request (recited in claim 5 from which claim 6 depends) comprises a list of target data processing systems to receive the data, an identifier of a method by which the target machines will receive and process the data, and an identifier of a notification method by which the result information from each endpoint system will be received by the preselected set of one or more data processing systems for managing data distributions. The Examiner asserts that the list of targets is taught by the distributed computing system discussed above in conjunction with , *inter alia*, claim 1. (Paper No. 7, page 4) (citing *Artsy*, column 5 lines 21-40). Plainly, this teaching makes no reference to a request at all, and necessarily does not teach a request comprising a list of target data processing systems to receive the data. (*Artsy* teaches an action path

object that includes a body constituting a graph of action stops, however, at least, an action path object is not a request.) The Examiner further asserts that an identifier of a method by which target machines will receive and process the data is taught by the disclosure that objects communicate with each other by invoking operations of their public interfaces by using a handle to locate the target object of an invocation, describing the structure of action path objects, and the submitter's information in the header of the action path object in particular. (Paper No. 7, pages 4-5) (citing *Artsy*, column 6, line 66 through column 7, line 6; column 8, lines 29-38; column 9, lines 1-9). Again, none of these discloses an identifier of a method by which target machines will receive and process data. Lastly, the limitation of claim 7 with respect to an identifier of a notification method is alleged to be taught implicitly by the same teaching referred to in conjunction with the identifier of a method by which the target machine will receive and process the data. (Paper No. 7, page 5) (citing *Artsy*, column 6, line 66 through column 7, line 6; column 8, lines 29-38; column 9, lines 1-9). Plainly, there is no express teaching of an identifier of a notification method by which result information from each endpoint system will be received by the preselected set of one or more data processing systems for managing data distributions.

To show that the limitation is implicitly taught, an examiner must provide a rationale or evidence that the result or characteristic is necessarily present in the thing described in *Artsy* and that it would be so recognized by persons of ordinary skill. MPEP § 2112. Furthermore, this may not be established by probabilities or possibilities; the mere fact that a certain thing may result from a given set of circumstances is not sufficient. MPEP § 2112.

Thus, the Applicants respectfully contend that *Artsy* does not teach the identical invention of claim 7, explicitly or inherently, and, therefore, claim 7 is not anticipated by *Artsy*. Claim 7 is thus allowable under 35 U.S.C. § 102 over *Artsy*.

Claim 12 depends from claim 11 and recites the method thereof in which the request (recited in claim 11) includes a list of target data processing systems to receive the data. The request also includes an identifier of a method by which the target machines will receive and process the data, and an identifier of a notification method by which the result information from each input system will be

received by the preselected set of one or more data processing systems from managing data distributions. Claim 12 has been rejected on the same basis as claim 7 (Paper No. 7, page 4). For at least the reasons that claim 7 is not anticipated by *Artsy* claim 12 is also not anticipated. Claim 12 is thus allowable under 35 U.S.C. § 102 over *Artsy*. Additionally, claim 19 has been rejected on the same basis as claims 7 and 12. (Paper No. 7, page 4.) Claim 19 is directed to a program product and recites a limitation paralleling the limitations of claims 7 and 12. Consequently, for at least the reasons discussed in conjunction with claim 12, the Applicants respectfully assert that claim 19 is also allowable under 35 U.S.C. § 102 over *Artsy*.

III. REJECTION UNDER 35 U.S.C. § 103

Claims 3, 14 and 21 have been rejected under 35 U.S.C. § 103 as being unpatentable over *Artsy* in view of *Nemirovsky, et al.* (U.S. Patent No. 6,477,562) ("*Nemirovsky*"). The Applicants respectfully traverse the rejection of claims 3, 14 and 21 under 35 U.S.C. § 103.

Claim 3 is directed to the system of claim 1 in which a data distribution has a preselected priority. The preselected priority is operable for determining an availability of resources for transferring of the data and the transferring of the result information. *Artsy* admittedly fails to teach or suggest the limitation of claim 3. (Paper No. 7, page 5.) *Nemirovsky* is relied upon as teaching, at least implicitly, the missing limitation. (*Id.*) However, *Nemirovsky* is directed to digital microprocessors and in particular to microprocessors operating with multiple processing streams. (*Nemirovsky*, column 1, lines 1-10.) *Nemirovsky* does not address data transfer over a network. Indeed the teaching relied upon in *Nemirovsky* discloses that each stream in a multi-streaming processor is assigned a priority representing the associated streams claimed processing resources relative to competing instruction streams. (*Nemirovsky*, column 5, line 60 through column 6, line 2) (emphasis added). The Examiner has provided no rationale whatsoever establishing the relevance of *Nemirovsky* to the invention of claim 3. *See* 37 C.F.R. § 1.104(c)(2). In other words, there is no rationale explaining why a person of ordinary skill in the art confronted with the problems related to

the bulk distribution of data addressed in the instant Application would look to a reference directed to instruction scheduling in a multistream microprocessor. (*See Nemirovosky*, column 1, lines 6-10.) That is, *Nemirovsky* is not analogous art. This is a threshold inquiry under 35 U.S.C. § 103. MPEP § 2141.01(a). That notwithstanding, the teaching in *Nemirovsky* neither discloses or suggests a data distribution having a preselected priority, the preselected priority operable for determining an availability of resources. Additionally, reliance on implicit teaching requires that objective evidence be provided that demonstrates that the inherent characteristic is necessarily present in the thing described in the reference and that it would be so recognized by persons of ordinary skill in the art. MPEP § 2112. No such evidence has been provided.

Additionally, a *prima facie* showing of obviousness requires that there be some motivation or suggestion to combine or modify the references to make the claimed invention. MPEP § 2143.01. The Examiner concludes that it would have been obvious to incorporate a priority record in *Artsy's* system issuing priority to data in order to give priority to the resources. (Paper No. 7, page 5.) However, such a motivation is not found in one of the three possible sources thereof on the teachings of the references themselves, the knowledge of persons of ordinary skill in the art or the nature of the problem to be solved. *See* MPEP § 2143.01. Moreover, there is no rationale provided for explaining how a priority scheme for prioritizing instruction streams in a multithreaded processor may be engrafted into a mechanism for routing objects on action paths in a distributed data processing system. The two are unrelated. Moreover, as discussed hereinabove, such broad statements regarding the teachings of multiple references are not evidence, and do not support a *prima facie* showing of obviousness. *In re Lee*, 277 F.3d at 1433, 61 U.S.P.Q.2d at 1433-34; *In re Kotzab*, 217 F.3d at 1371, 55 U.S.P.Q.2d at 1317; *In re Dembiczak*, 175 F.3d at 999, 50 U.S.P.Q.2d at 1616.

Consequently, for at least these reasons, the Applicants respectfully contend that a *prima facie* showing of obviousness has not been made. Therefore, claim 3 is allowable under 35 U.S.C. § 103 over *Artsy* and *Nemirovsky*.

Claim 14 is directed to a method of claim 13 and further including the step of determining an availability of a network connection for transferring of results information in response to one of the

preselected set of priority values. Claim 14 has been rejected in view of *Nemirovsky* allegedly teaching, at least implicitly, the limitations thereof. (Paper No. 7, page 6.) However, as discussed in conjunction with claim 3, the teaching in *Nemirovsky* does not address the determination of an availability of a network connection based on a selected set of priority values. Again there is no rationale explaining why a person of ordinary skill in the art would look to *Nemirovsky*, directed to instruction scheduling in a multistream microprocessor for a solution to the problems confronted in the instant Application. The Examiner also does not provide a rationale explaining how the teaching in *Nemirovsky* may be incorporated in *Artsy*, concluding that it would have been obvious to do so to allow the network to process responses in a timely and efficient manner. (Paper No. 7, page 6.) The Applicants respectfully contend that such broad conclusory statements are not sufficient to sustain a *prima facie* showing of obviousness. Therefore, because the references, alone or in combination fail to teach or suggest all of the limitations of claim 14, and because no motivation sufficient to sustain a *prima facie* showing obviousness has been identified in one of the possible sources thereof, the Applicants respectfully contend that claim 14 is allowable under 35 U.S.C. § 103 over *Artsy* and *Nemirovsky*. Additionally, claim 21 has been rejected on the same ground as claim 14. (Paper No. 7, page 6.) Claim 21 is directed to a program product and further including instructions for performing operations paralleling the limitations of claim 14. For at least the reasons discussed in conjunction with claim 14, the Applicants also respectfully contend that claim 21 is allowable under 35 U.S.C. § 103 over *Artsy* and *Nemirovsky*.

IV. REJECTION UNDER 35 U.S.C. § 103

Claim 8 has been rejected under 35 U.S.C. § 103 as being unpatentable over *Artsy* in view of *Chang et al.*, U.S. Patent No. 5,367,643 ("*Chang*"). The Applicants respectfully traverse the rejection of claim 8 under 35 U.S.C. § 103.

Claim 8 depends from claim 6 and recites the system thereof in which the request is assigned a preselected distribution priority and the request is enqueued in accordance with the preselected

distribution priority. (Claim 6 is directed to the system of claim 5 in which a preselected one of the one or more data processing systems for managing data distributions enqueues the request in a database.) *Artsy* admittedly fails to teach the limitation of claim 8. (Paper No. 7, page 6.) *Chang* is directed to a generic high bandwidth adapter having data packet memory for temporary storage of variable length data packets thereby providing a data interface between system buses, switching fabrics, transmission media and a variety of LANs. (*Chang*, column 1, lines 1-17.) *Chang* allegedly teaches the limitation of claim 8 in *Chang* in disclosing that the adapter organizes packets into queues, each queue comprising a linked list of data packets having a given priority level and destined for the same logical input/output port or to be processed in a similar manner by a processor subsystem, the queues organized into a queue set for each input/output port. (Paper No. 7, page 7) (citing *Chang*, column 5, lines 10-25). The Examiner also refers to teaching in *Chang* that discloses that each input/output port examines the contents of incoming data packets and determines the proper queue into which the data packet should be enqueued. (Paper No. 7, page 7) (citing *Chang*, column 5, lines 33-36). With respect to the queues in *Chang*, *Chang* further discloses that a queue is a list of packets stored in sequence whereby a packet can be enqueued either from the queue head or from the queue tail and that a generic adapter manager (GAM) has a queue control block for every queue in the adapter. (*See, e.g.*, Paper No. 3, page 8; Paper No. 5, page 7) (citing *Chang*, column 19, lines 21-33). Additionally, the Examiner relies on teaching in *Chang* disclosing that users of services send a current request for the services to a manager with a current request defining a specified address in a memory of the manager and wherein the manager has previously prepared responses to anticipated request for services and stored the responses at specified addresses in its memory, the manager sending, a response which had been previously prepared and stored at the specified address in response to the current request. (Paper No. 7, page 7) (citing *Chang*, column 5, lines 58-64). Again, the express teaching of *Chang* referred to does not disclose or suggest the limitations of claim 8, by their plain terms, and no rationale evidencing that the limitations are inherent in *Chang* has been provided. *See* MPEP § 2112. With respect to a motivation for modifying or combining the references, it is contended that it would have been obvious to include one or more data processing systems enqueuing the request in a database to allow request to be removed in the same order they

were entered. (Paper No. 7, page 7.) However, as previously discussed, a motivation or suggestion to modify a reference must be found in the references themselves, the nature of the problem to be solved, or the knowledge of persons of ordinary skill in the art. None of these sources has been identified as the source of the motivation for combining *Artsy* and *Chang* to make the invention of claim 8. Because, for these reasons, the references alone or in combination have not been shown to teach or suggest all of the limitations of claim 8, nor has a motivation upon which a *prima facie* showing of obviousness may be predicated been provided, the Applicants respectfully assert that claim 8 has not been shown to be *prima facie* obvious in view of *Artsy* and *Chang*. Consequently, claim 8 is allowable under 35 U.S.C. § 103 over *Artsy* and *Chang*.

V. REJECTION UNDER 35 U.S.C. § 103

Claims 13, 15, 20 and 22 have been rejected under 35 U.S.C. § 103 as being unpatentable over *Artsy* in view of *Fujino* and in further view of *Nemirovski*. The Applicants respectfully traverse the rejection of claims 13, 15, 20 and 22 under 35 U.S.C. § 103.

Claim 13 is directed to the method of claim 10 and further including the steps of assigning one of a preselected set of priority values to each data distribution, and determining an availability of a network connection for the step of transferring the data in response to the one of the preselected set of priority values. *Artsy* and *Fujino* are relied upon as teaching the limitations of claim 13 incorporated therein through its dependency on claim 10. (Paper No. 7, page 7.) As an initial matter, as discussed hereinabove in conjunction with, *inter alia*, claim 10, the Applicants respectfully disagree that these limitations have been shown to be taught or suggested by *Artsy* in view of *Fujino*. Moreover, the express limitation of claim 13 is admittedly missing in *Artsy* and *Fujino*. (Paper No. 7, page 7.)

The Examiner relies on the discussion in *Nemirovsky* discussed hereinabove in conjunction with, *inter alia*, claim 3 as disclosing, at least implicitly, the limitations of claim 13. (Paper No. 7, page 7.) For the reasons discussed in conjunction with claim 3, the Applicants respectfully contend

that the teachings in *Nemirovsky* have not been shown to teach either explicitly or implicitly, the limitations of claim 13. In sum, *Nemirovsky* is directed to a system for assigning priorities associated with an instruction stream relative to competing instruction streams in a multi-streaming processor. (*Nemirovsky*, column 5, lines 61 through column 6, line 2.) Thus, neither *Artsy*, *Fujino* or *Nemirovsky*, alone or in combination, teach or suggest all of the limitations of claim 13. With respect to a motivation for modifying or combining the references, the Examiner asserts that it would have been obvious to make the invention of claim 13 to allow data to be processed in a timely and efficient manner according to their priority value. (Paper No. 7, page 8.) Again, the Applicants respectfully contend that this motivation is not sufficient to sustain a *prima facie* showing of obviousness as not arising in one of the three possible sources thereof nor being clear and specific. (*See* MPEP § 2143.01; *In re Lee*, 277 F.3d at 1343, 61 U.S.P.Q.2d at 1433-34; *In re Kotzab*, 217 F.3d at 1371, 55 U.S.P.Q.2d at 1317; *In re Dembiczak*, 175 F.3d at 999, 50 U.S.P.Q.2d at 1616. Therefore, a *prima facie* showing of obviousness has not been made with respect to claim 13, and claim 13 is allowable under 35 U.S.C. § 103 over *Artsy*, *Fujino* and *Nemirovsky*. Claim 20 has been rejected on the same basis as claim 13. (Paper No. 7, page 7.) Claim 20 has been rejected as reciting a program product including instructions for performing operations paralleling the steps of claim 13. For at least the reasons discussed in conjunction with claim 13, the Applicants also respectfully contend that claim 20 is allowable under 35 U.S.C. § 103 over *Artsy*, *Fujino* and *Nemirovsky*.

Claim 15 is directed to the method of claim 13 and further including the steps of assigning a distribution lifetime value to each data distribution, and aborting the step of transferring the data in response to an unavailability of the connection for a time interval corresponding to the distribution lifetime. As discussed hereinabove, in conjunction with claims 13 and 10, the limitations of which are incorporated into claim 15, the Applicants respectfully contend that *Artsy* and *Fujino*, alone or in combination, fail to teach these limitations incorporated in claim 15 by reference. Additionally, *Artsy* and *Fujino* admittedly fail to disclose the express limitations of claim 15. (Paper No. 7, page 8.) The Examiner relies on *Nemirovsky* as disclosing the limitations of claim 15 (Paper No. 7, page 8.) *Nemirovsky* allegedly teaches the limitations of claim 15 in disclosing, at least implicitly, that a

thread is made active by loading an available context frame with the threads program counter address and register values and assigning it an active priority and that when there are more active threads than streams available to execute threads, a number of threads up to the available number of context frames are made active and the remaining threads remain temporarily inactive (assigning a distribution lifetime value). (*See* Paper No. 7, page 8) (citing *Nemirovsky*, column 7, lines 17-25). With respect to the step of aborting the transferring step . . . , *Nemirovsky* allegedly discloses this limitation, at least implicitly, in disclosing that logic for determining and issuing priorities in various embodiments may be implemented in a variety of ways, including that priorities may be fixed by stream, but access to resources may be managed in addition to priority access, or, alternatively, priority by stream may vary and access may be dynamically managed as well; criteria for both access and priority termination may be from varied sources as well, including on-chip statistics, functional unit utilization or branch prediction, according to data arrival and availability, or by input from off-chip and, and in combinations of these and other criteria. (*See* Paper No. 3, page 8) (citing *Nemirovsky*, column 5, lines 60 through column 6, line 16). Plainly, these teachings do not disclose a step of aborting a step of transferring data in response to an unavailability of a connection time. Moreover, as previously discussed with respect to *Nemirovsky*, *Nemirovsky* is directed to mechanisms for assigning priorities representing an instruction stream's claim to processing resources relative to competing instruction streams. The Examiner has provided no rationale based on reasoning from sound technical principles explaining how the teaching in *Nemirovsky* teaches or suggests the foregoing limitation of claim 15. *See* MPEP § 2144.03. Neither is there a rationale explaining why a person of ordinary skill in the art would look to the problems addressed in the instant Application. *See* MPEP § 2141.01(a). With respect to a motivation for modifying or combining the references, the Examiner asserts that it would have been obvious so as to allow data to be deleted when a time period has expired. (Paper No. 7, page 8.) Again, for reasons analogous to those discussed hereinabove, the motivation for modifying *Artsy* or combining *Artsy* with *Nemirovsky* and *Fujino* are not sufficient to demonstrate a *prima facie* showing of obviousness. Consequently, for at least this reason and because the references alone or in combination have not been shown to teach or suggest all of the limitations of claim 15, the Applicants respectfully assert that a *prima facie* showing of obviousness has not been made with

respect to claim 15. Consequently, claim 15 is allowable under 35 U.S.C. § 103 over *Artsy*, *Fujino* and *Nemirovsky*.

Claim 22 has been rejected on the same ground as claim 15 as being directed to a program product including instructions for performing operations paralleling the method steps of claim 15. For at least the reasons discussed in conjunction with claim 15, the Applicants also respectfully assert that claim 22 is allowable under 35 U.S.C. § 103 over *Artsy*, *Fujino* and *Nemirovsky*.

VI. RESPONSE TO ARGUMENTS

The Examiner responds by summarizing the Applicants' arguments in the Applicants' Second Reply Under 37 C.F.R. § 1.111 mailed on August 6, 2003 (the "Applicants' Second Reply"). (Paper No. 7, pages 9-17.) The Examiner deems the arguments moot in view of the new ground of rejection without substantively addressing the issues raised therein. (Paper No. 7, page 9.) The Applicants will not address the Examiner's summary of the Applicants' arguments as the Applicants' showings are a matter of record.

VII. CONCLUSION

As a result of the foregoing, it is asserted by Applicants that the remaining Claims in the Application are in condition for allowance, and respectfully request an early allowance of such Claims.

Applicants respectfully request that the Examiner call Applicants' attorney at the below listed number if the Examiner believes that such a discussion would be helpful in resolving any remaining problems.

Respectfully submitted,

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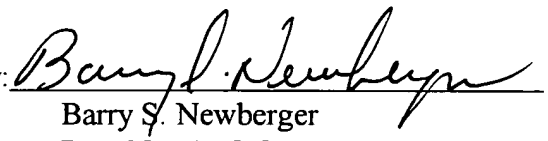
Attorneys for Applicant

By: 
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